

DATES: Interim regulations are effective January 4, 1995. Comments must be received on or before February 3, 1995.

ADDRESSES: Written comments may be sent to Lucretia F. Myers, Assistant Director for Insurance programs, Retirement and Insurance Group, Office of Personnel Management, P.O. Box 57, Washington, DC 20044; delivered to OPM, Room 4351, 1900 E Street NW., Washington, DC; or FAXed to (202) 606-0633.

FOR FURTHER INFORMATION CONTACT: Mary Ann Mercer, (202) 606-0191.

SUPPLEMENTARY INFORMATION: Recent final audit reports on community-rated plans issued by OPM's Office of Inspector General include monetary findings based on interest income lost to the FEHB Program because of FEHB Program carrier overcharges. A few carriers have questioned the period covered by the interest charges assessed by OPM. Specifically, they question OPM's policy of charging interest on the overcharges from the date the Government pays the inflated rate to the date of the carrier's full repayment to the Government. They believe that, in the absence of a specific contractual provision, OPM should charge interest not from the date of the overpayment by the Government, but from 30 days after its first written demand, as provided in the Federal Acquisition Regulation (FAR) general interest clause at 52.232-17. Because the monetary findings are significant in value, OPM is issuing these regulations to clarify its policy.

In FEHB Program contracts with CMP's using community rates, premiums and subscription income are determined on the basis of community rating. A community rate is deemed the equivalent of the FAR's description of an established catalog or market price. Each CMP certifies to the accuracy of its pricing; or, if granted an exemption by OPM, represents that all the statements made on or attached to its SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, are correct. If, upon audit, it is determined that the rates are not correct and the carrier has overcharged the FEHB Program, OPM assesses an interest charge in accordance with FAR 52.215-23, Price Reduction for Defective Cost or Pricing Data—Modifications. This provision allows the contracting officer to charge simple interest on the amount of the overpayment computed from the date the overpayment is made to the contractor to the date the Government is repaid by the contractor.

FAR 52.215-23 applies to contract modifications involving a price

adjustment exceeding \$100,000, but does not apply to modifications for which the price is (1) based on adequate price competition; (2) based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or (3) set by law or regulation. OPM applies this clause as follows: A community rate is deemed the equivalent of an established catalog or market price; however, the defective community rates constitute that part of the quoted rate that does not fall within the catalog or market part of the price. Had the carrier priced the FEHB contract correctly according to the catalog or market price, this clause would not become operative. The defective portion of the rate is not a market or catalog price; that is, the defective portion is a modification to the catalog or market price. Since the carrier did not comply with the terms of its submission, it is responsible for correcting the price so that it is the catalog or market price and for making the government whole by paying interest from the date the government was overcharged.

By restating this interest provision in a specific clause in the FEHB Program acquisition regulations at FEHBA 1652.215-70, OPM makes it clear that its policy is to charge interest from the date it pays the carrier the higher rate to the date the full repayment is made to OPM.

Waiver of Notice of Proposed Rulemaking

Pursuant to section 553(b)(3)(A) of title 5 of the U.S. Code, I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because the regulations simply interpret rules and clarify OPM's current policy with respect to the assessment of interest on amounts that become payable by the contractor to the FEHB Fund.

E.O. 12866, Regulatory Review

This rule has been reviewed by OMB in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it merely reiterates and clarifies OPM's existing policy.

List of Subjects in 48 CFR Part 1652

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

Lorraine A. Green,
Deputy Director.

Accordingly, OPM is amending Chapter 16 of Title 48, Code of Federal Regulations, as follows:

Chapter 16—Office of Personnel Management Federal Employees Health Benefits Acquisition Regulation

PART 1601—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR part 1652 continues to read as follows:

Authority: 5 U.S.C. 8913; 40 U.S.C. 486(c); 48 CFR 1.301.

2. In the clause under section 1652.215-70, the heading is revised and two sentences are added to the end to read as follows:

§ 1652.215-70 Rate Reduction for Defective Pricing or Defective Cost or Pricing Data.

* * * * *

Rate Reduction for Defective Pricing or Defective Cost or Pricing Data (Oct 1994)

* * * When the Contracting Office determines that the Carrier did not charge a market price and the Government is entitled to a refund, the refund shall bear simple interest from the date the overcharge was paid by the Government to the Carrier until the date the overcharge is liquidated. In calculating the amount of interest due, the quarterly rate determinations by the Secretary of the Treasury under the authority of 26 U.S.C. 6621(a)(2) applicable to the periods the overcharge was retained by the Carrier shall be used.

(End of Clause)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB97

Endangered and Threatened Wildlife and Plants; Endangered Status for Three Hawaiian Plant Species of the Genus *Melicope*

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) designates endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants in the genus *Melicope* (alani): *M. adscendens*, *M. balloui*, and *M. ovalis*. All three species are endemic

to the slopes of Haleakala on the island of Maui, Hawaiian Islands. The three plant species and their habitats have been variously affected or are currently threatened by habitat degradation and damage to plants by feral and domestic animals (cattle and/or pigs), and/or by competition for space, light, water, and nutrients by naturalized, introduced vegetation. Due to the small number of existing individuals and their very narrow distributions, these species and their populations are vulnerable to reduced reproductive vigor and/or an increased likelihood of extinction from stochastic events. This final rule implements the Federal protection and recovery provisions provided by the Act.

EFFECTIVE DATE: January 4, 1995.

ADDRESSES: The complete file for this final rule is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Boulevard, Room 6307, P.O. Box 50167, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Robert P. Smith, Field Supervisor, at the above address (808/541-2749).

SUPPLEMENTARY INFORMATION:

Background

Melicope adscendens, *M. balloui*, and *M. ovalis*, members of the citrus family (Rutaceae), are endemic to the slopes of Haleakala on the island of Maui, Hawaiian Islands. The island of Maui comprises remnants of two large shield volcanoes, the older West Maui Volcano on the west and the larger and much younger Haleakala Volcano on the east. These two volcanoes and the connecting isthmus formed by lava flows make up an island 1,888 square kilometers (sq km) (729 sq miles (mi)) in area. Haleakala, on East Maui, erupted just 200 years ago and has an elevation of 3,055 meters (m) (10,023 feet (ft)). Haleakala still retains its classic shield shape and has somewhat less diverse vegetation than the older and more eroded West Maui Mountains. Rainfall on Haleakala averages about 890 centimeters (cm) (350 inches (in)) per year, with the mountain's windward (northeastern) slope receiving the most precipitation. However, Haleakala's inner crater is a dry cinder desert because it is above the level at which precipitation develops and is sheltered from moisture-laden winds (Gagne and Cuddihy 1990).

Melicope adscendens occurs in *Nestegis sandwicensis* (Olopua) Lowland Mesic Forest. This vegetation type, which includes co-dominant

Pleomele auwahiensis (hala pepe), now exists as scattered patches, much of the original area having been converted to pasture land. This forest occurs between the elevations of 30 and 1,600 m (100 and 5,250 ft). Rain falls mostly from October to March, and substrates are well-drained. *Melicope balloui* and *M. ovalis* occur in *Acacia koa*/*Metrosideros polymorpha* (Koa'/Ohi'a) Montane Wet Forest. This plant community occurs between the elevations of 1,200 and 2,200 m (3,900 and 7,200 ft). Annual rainfall is over 2,500 millimeters (mm) (98 in) and is evenly distributed throughout the year. The climate is warm, and frequent afternoon fog often results in fog drip. Substrates are volcanic with well developed soil. This is a highly stratified community, comprising, in order of canopy height: koa (up to 40 m tall); 'ohi'a (up to 30 m tall); several native tree species (10 to 20 m tall); *Cibotium* (hapu'u) (understory canopy); and shrubs, herbs, ferns, and mosses (shade-tolerant understory) (Gagne and Cuddihy 1990; Hawaii Heritage Program (HHP) 1992a, 1992c, 1992d, 1992f).

The only known extant population of *Melicope adscendens* and one of two populations of *M. balloui* are located on privately owned land. The only known extant population of *M. ovalis* and the second population of *M. balloui* are in Haleakala National Park, which is owned by the Federal Government (HHP 1992a, 1992c, 1992d, 1992f).

Discussion of the Three Species

Melicope adscendens was first collected by Charles Noyes Forbes at Auwahi on the southwestern slopes of Haleakala in 1920. Harold St. John and Edward P. Hume (St. John 1944) later named and described the species as *Pelea adscendens*, choosing the specific epithet to describe the habit of the plant. Thomas G. Hartley and Benjamin C. Stone (1989, Stone *et al.* 1990, Wagner *et al.* 1990) synonymized the genus *Pelea* with *Melicope*, resulting in *M. adscendens*, the current name for this species.

Melicope adscendens is a sprawling shrub with long, slender branches covered with gray hairs when young and becoming hairless when older. New growth is covered with many fine, yellowish to golden brown hairs. The opposite, widely spaced, leathery to papery, elliptic leaves measure 1.5 to 6.5 cm (0.6 to 2.6 in) long and 1 to 4 cm (0.4 to 1.6 in) wide and have petioles 0.6 to 1.6 cm (0.2 to 0.6 in) long. Both upper and lower surfaces of mature leaves are hairless. Each flower cluster is on a main stalk 13 to 17 mm (0.5 to 0.7 in) long and comprises one to three

flowers on individual stalks usually 4 to 8 mm (0.2 to 0.3 in) long. Only female flowers have been observed, and each consists of four sepals about 3.5 mm (0.1 in) long, four petals about 5 mm (0.2 in) long, an eight-lobed nectary disk, eight reduced and nonfunctional stamens, and a hairless four-celled ovary. The 14 to 15 mm (0.6 in) wide fruit is made up of 4 distinct follicles (dry fruits splitting along one side) 7 to 7.5 mm (0.3 in) long. Sepals and petals remain attached to the mature fruit. The endocarp (inner fruit wall) and the wrinkled exocarp (outer fruit wall) are both hairless. *Melicope adscendens* is distinguished from other species of the genus by its habit, the distinct follicles of its fruit, and the persistent (remaining attached) sepals and petals (Stone 1969, Stone *et al.* 1990).

Melicope adscendens has been found only on the island of Maui on the southwestern slope of Haleakala. Two plants, separated by an unspecified distance, were found by Forbes in 1920. Today, one of these plants is still known to exist near Puu Ouli on privately owned land; the other plant has not been relocated. This species typically grows in Olopua Lowland Mesic Forest with hala pepe as a co-dominant at elevations between 914 and 1,200 m (3,000 and 3,900 ft). Associated taxa include *Chamaesyce celastroides* var. *lorifolia* ('akoko), *Dodonaea viscosa* (a'ali'i), *Pouteria sandwicensis* ('ala'a), and *Styphelia tameiameia* (pukiawe). The plant grows next to a water pipeline on land used as a cattle (*Bos taurus*) ranch. Major threats are habitat damage and trampling by cattle, competition with the alien plant species *Lantana camara* (lantana) and *Pennisetum clandestinum* (Kikuyu grass), and reduced reproductive vigor and/or extinction from stochastic events due to the existence of only one known population with one individual. Potential threats include habitat degradation and damage to plants by feral axis deer (*Axis axis*), goats (*Capra hircus*), feral pigs (*Sus scrofa*), black twig borer (*Xylosandrus compactus*), fire, and ranch activities (such as water pipeline maintenance) (HHP 1992a; Art Medeiros, Haleakala National Park, Robert Hobdy, Hawaii Department of Land and Natural Resources, and Steve Perlman, Hawaii Plant Conservation Center, pers. comms., 1992).

Melicope balloui was first collected by Horace Mann, Jr., and William Tufts Brigham in 1864 or 1865. When Wilhelm Hillebrand (1888) named this plant *Pelea mannii*, he cited this specimen as well as a specimen which is now thought to be *P. peduncularis*. If Mann and Brigham's specimen is

chosen as the type of *P. mannii*, the correct name for the taxon will be *M. mannii*, and *M. balloui* will become a synonym (Stone *et al.* 1990). When naming *P. balloui*, Rock (1913) based his name on a specimen he had collected in 1910. Rock chose the specific epithet to honor Howard M. Ballou, who corrected the proof sheets of his landmark book on Hawaiian indigenous trees (Rock 1913). The specimen St. John cited as the type when he named and described *P. ukuleleensis* actually comprised material of both *P. balloui* and *P. clusiaefolia*, both previously validly published names (Stone 1963). Following the transfer of the genus *Pelea* to *Melicope* (Hartley and Stone 1989, Wagner *et al.* 1990), authors of the current treatment of the Hawaiian members of the genus (Stone *et al.* 1990) now consider *P. balloui* and *P. ukuleleensis* to be synonyms of *M. balloui*.

Melicope balloui is a small tree or shrub, the new growth of which has yellowish brown woolly hairs and waxy scales. Plant parts later become nearly hairless. Leaves are opposite, leathery, inversely ovate to elliptic, 5 to 10 cm (2.0 to 3.9 in) long, 3 to 7 cm (1.2 to 2.8 in) wide, and have petioles 1.0 to 2.6 cm (0.4 to 1.0 in) long. The upper and lower surfaces of mature leaves are hairless except along the midrib of the lower surface. Each flower cluster is on a main stalk 3 to 16 mm (0.1 to 0.6 in) long and comprises five to nine flowers on individual stalks about 5 mm (0.2 in) long. Only female flowers have been observed, and each consists of four sepals about 3 mm (0.1 in) long, four petals about 4 mm (0.2 in) long, an eight-lobed nectary disk, eight reduced and nonfunctional stamens, and a four-celled ovary with many short, fine hairs. The fruit, a four-lobed capsule 2.5 to 2.7 cm (1.0 to 1.1 in) wide, consists of 1.2 to 1.3 cm (0.5 in) long carpels fused about a quarter of their length. Sepals and petals usually remain attached to the mature fruit. One or two glossy black seeds about 7 mm (0.3 in) long are found in each fertile carpel. The exocarp and endocarp are covered with fine, short hairs. *Melicope balloui* is distinguished from other species of the genus by the partially fused carpels of its four-lobed capsule and the usually persistent sepals and petals (Stone *et al.* 1990).

Melicope balloui has been found only on the island of Maui on the northern and southeastern slopes of Haleakala. There are two known extant populations, located approximately 4.0 km (2.5 mi) apart near Puu o Kakae on privately owned land and in Kipahulu Valley on federally owned land within

Haleakala National Park. The two populations are comprised of an estimated total of no more than 10 individuals. This species typically grows in koa- and 'ohi'a-dominated Montane Wet Forests at elevations between 760 and 1,520 m (2,500 and 5,000 ft). Associated taxa include *Coprosma* sp. (pilo), *Dicranopteris linearis* (uluhe), *Joinvillea ascendens* ssp. *ascendens* ('ohe), and *Peperomia subpetiolata* ('ala'ala wai nui). Major threats are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction from stochastic events due to the small number of existing populations and individuals. Potential threats include competition with alien plant taxa, such as *Paspalum conjugatum* (Hilo grass) and *Psidium cattleianum* (strawberry guava), susceptibility to black twig borer, and habitat degradation and damage to plants by feral goats and axis deer (HHP 1992c, 1992d; Linda Cuddihy, Hawaii Volcanoes National Park, and A. Medeiros, pers. comms., 1992).

Based on a specimen collected by Forbes in the mountains above Hana, East Maui, St. John (1944) described and named *Pelea ovalis*, choosing the specific epithet to refer to the shape of the leaves of the species. Hartley and Stone (1989) synonymized the genus *Pelea* with *Melicope*, resulting in the combination *M. ovalis*.

Melicope ovalis is a tree up to 5 m (16 ft) tall. New growth has fine, short, brownish hairs and soon becomes hairless. Leaves are opposite, leathery, broadly elliptic, 8 to 16 cm (3.1 to 6.3 in) long, 4 to 10 cm (1.6 to 3.9 in) wide, and have petioles 3 to 4 cm (1.2 to 1.6 in) long. The upper and lower surfaces of the leaves are hairless, and bruised foliage has an anise odor similar to that of *M. anisata* (mokiha). Each flower cluster is on a main stalk 3 to 12 mm (0.1 to 0.5 in) long and comprises three to seven flowers on individual stalks 10 to 13 mm (0.4 to 0.5 in) long. Further details of the flowers are unknown. The fruit, a capsule about 1 cm (0.4 in) long and 1.2 to 1.4 cm (0.5 to 0.6 in) wide, has carpels that are fused along almost their entire length. Each fertile carpel contains one or two glossy black seeds about 5 mm (0.2 in) long. The exocarp and endocarp are both hairless.

Melicope ovalis is distinguished from other species of the genus by the almost entirely fused carpels of its capsule, its nonpersistent sepals and petals, and its well-developed petioles (Stone *et al.* 1990).

Melicope ovalis has been found only on the island of Maui on the eastern and southeastern slopes of Haleakala. There

is one known extant population, located in Kipahulu Valley in Haleakala National Park. This species typically grows in koa- and 'ohi'a-dominated Montane Wet Forests at elevations between 850 and 1,430 m (2,800 and 4,700 ft). Associated taxa include *Broussaisia arguta* (kanawao), *Cheirodendron trigynum* ('olapa), and *Perrottetia sandwicensis* (olomea). Major threats are habitat degradation and damage to plants by feral pigs and reduced reproductive vigor and/or extinction from stochastic events due to the existence of only one population and one known individual. Competition with alien introduced plants such as Hilo grass and strawberry guava, susceptibility to black twig borer, and habitat degradation and damage to plants by feral goats and axis deer are potential threats (HHP 1992e, 1992f; L. Cuddihy and A. Medeiros, pers. comms., 1992).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94-51, was presented to Congress on January 9, 1975. In that document, *Melicope balloui* (as *Pelea balloui*) and *M. ovalis* (as *P. ovalis*) were considered to be endangered. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of its intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species, including *M. balloui* (as *P. balloui*) and *M. ovalis* (as *P. ovalis*). The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94-51 and the July 1, 1975, **Federal Register** publication. General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, the Service

published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published an updated notice of review for plants on December 15, 1980 (45 FR 82479), in which *M. balloui* (as *P. balloui*) and *M. ovalis* (as *P. ovalis*) were considered to be Category 1 candidates for Federal listing. Category 1 species are those for which the Service has on file substantial information on biological vulnerability and threats to support preparation of listing proposals. In an updated notice of review published on September 27, 1985 (50 FR 39525), *M. balloui* (as *P. balloui*) was considered to be a Category 1 species, and *M. ovalis* (as *P. ovalis*) a Category 1* species. Category 1* taxa are those that are possibly extinct. In a notice of review published February 21, 1990 (55 FR 6183), *M. adscendens* was treated as a Category 3A species and *M. balloui* and *M. ovalis* as Category 1* species. Category 3A species are those for which the Service has persuasive evidence of extinction. Because specimens collected in the past few years were recently verified as being these three species, they are confirmed extant and are being listed as endangered.

For petitions presenting substantial information that listing may be

warranted, section 4(b)(3)(B) of the Act requires the Secretary to make a finding on whether the petitioned action is warranted within 12 months of receipt of the petition. Section 2(b)(1) of the 1982 amendments further requires all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. On October 13, 1983, the Service found that the petitioned listing of these species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Notification of this finding was published in the **Federal Register** on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed in October of 1984, 1985, 1986, 1987, 1988, 1989, 1990, and 1991. Publication of the proposed rule constituted the final one-year finding for these species.

On May 11, 1993, the Service published in the **Federal Register** (58 FR 18073) a proposal to list the plants *Melicope adscendens*, *M. balloui*, and *M. ovalis* as endangered. This proposal was based primarily on information supplied by the Hawaii Heritage Program and observations by botanists and naturalists. The Service now determines these three species of *Melicope* to be endangered with the publication of this rule.

Summary of Comments and Recommendations

In the May 11, 1993, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final listing decision. The public comment period ended July 12, 1993. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in "The Honolulu Advertiser" on June 2, 1993, and "The Maui News" on June 1, 1993. No letters of comment were received.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533) and regulations (50 CFR Part 424) promulgated to implement the Act set forth the procedures for adding species to the Federal endangered and threatened species lists. A species may be determined to be an endangered species due to one or more of the five factors described in section 4(a)(1). The threats facing these three species are summarized in Table 1.

TABLE 1.—SUMMARY OF THREATS

Species	Alien mammals				Insects	Alien plants	Fire	Human impacts	Limited numbers*
	Cattle	Deer	Goats	Pigs					
<i>Melicope adscendens</i>	X	P	P	P	P	X	P	P	X
<i>Melicope balloui</i>		P	P	X	P	P			X
<i>Melicope ovalis</i>		P	P	X	P	P			X

KEY:

X=Immediate and significant threat.

P=Potential threat.

*=No more than 10 known individuals and no more than 2 known populations.

These factors and their application to *Melicope adscendens* (St. John and E. Hume) T. Hartley and B. Stone (alani), *M. balloui* (Rock) T. Hartley and B. Stone (alani), and *M. ovalis* (St. John) T. Hartley and B. Stone (alani) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The native vegetation of East Maui has undergone extreme alterations because of past and present land management practices, including deliberate alien plant and animal introductions and agricultural development (Scott *et al.* 1986). Degradation of habitat by feral animals and competition with alien

plants are considered to be the major threats to the three species.

Cattle, introduced to Maui in the early 1800s, were permitted to range freely and subsequently became quite numerous. Cattle have converted large tracts of forest to open pasture on southern and northwestern Haleakala. Feral cattle consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Cuddihy and Stone 1990, Stone 1985). Along with goats, cattle are considered one of the two most damaging alien vertebrates to Hawaii's native ecosystems. The long history of cattle grazing has so altered the southern slope of Haleakala that only

pockets of native vegetation remain (Scott *et al.* 1986). The single known individual of *Melicope adscendens* grows in an area used for grazing, and cattle are considered an immediate threat to the species (A. Medeiros, pers. comm., 1992).

Goats were introduced to Maui by the early 1800s and are now a serious threat to the integrity of Maui's forests. The impact of goats on the native vegetation is similar to that described for cattle (Cuddihy and Stone 1990, Stone 1985). Although they have now been removed, feral goats entered Kipahulu Valley in the past and could become a threat to *Melicope balloui* and *M. ovalis* if they return. Goats also occur near *M*

adscendens in Auwahi and are a potential threat to that species as well (A. Medeiros, pers. comm., 1992).

Axis deer cause habitat degradation by trampling, consuming, and overgrazing vegetation. This process removes ground cover and often results in soil erosion. Alien plant taxa are then able to exploit the newly disturbed areas (Cuddihy and Stone 1990). Axis deer have become established at low elevation slopes of western and southern Haleakala and may become a threat to mesic and wet native forests on Haleakala. They are a potential threat to all three endangered species of *Melicope* (R. Hobdy and A. Medeiros, pers. comms., 1992).

In contrast to goats and cattle, pigs typically occupy the wetter regions of Hawaii's forests and are one of the major current modifiers of wet forest habitats. Pigs damage native vegetation by their rooting and trampling activities. This process encourages the ingress of alien plants, which are able to exploit newly disturbed soil better than native taxa. In addition, these animals disseminate alien plant taxa through their feces and on their bodies (Cuddihy and Stone 1990, Stone 1985). Pigs have severely damaged fragile and limited communities, such as that of *Argyroxiphium virescens* (greensword) (Stone 1985). This species of greensword was found at an historic site of *Melicope balloui*, which has not been relocated since 1920, and it is possible that pig damage caused the destruction of the habitat (HHP 1992g). Although *M. balloui* and *M. ovalis* grow in areas of Kipahulu Valley that are fenced to exclude pigs, the areas are not yet pig-free, so trampling of seedlings by pigs remains a threat to these two species (HHP 1992b, 1992d, 1992f; L. Cuddihy and R. Hobdy, pers. comms., 1992). Pigs are also present in Auwahi and constitute a potential threat to *M. adscendens* (S. Perlman, pers. comm., 1992).

B. Overutilization for commercial, recreational, scientific, or educational purposes. Unrestricted collecting for scientific or horticultural purposes and excessive visits by individuals interested in seeing rare plants could result from increased publicity. This is a potential threat to all three of the proposed species, none of which has more than a total of two populations or 10 known individuals. Collection of whole plants or reproductive parts of these species could cause an adverse impact on the gene pool and threaten the survival of the species.

C. Disease or predation. The black twig borer is a small beetle about 1.6 mm (0.06 in) in length that burrows into

branches, introduces a pathogenic fungus as food for its larvae, and lays its eggs. Twigs, branches, and even an entire plant can be killed from such an infestation. In the Hawaiian Islands, black twig borer has many hosts and is widespread. It is known to attack species of *Melicope* and is a potential threat to all three proposed species (Hara and Beardsley 1979).

D. The inadequacy of existing regulatory mechanisms. *Melicope ovalis* occurs exclusively on Federal land (Haleakala National Park) but feral pigs still pose a threat in this area. *Melicope adscendens* is found exclusively on private land. One of the two known extant populations of *M. balloui* occurs on privately owned land within a State conservation district.

Conservation district lands are regarded, among other purposes, as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and private landowners (HRS, sect. 205-4). The Hawaii Department of Land and Natural Resources is mandated to initiate changes in conservation district boundaries to include "the habitat of rare native species of flora and fauna within the conservation district" (HRS, sect. 195D-5.1). Hawaii environmental policy, and thus approval of land use, is required by law to safeguard "the State's unique natural environmental characteristics" (HRS, sect. 344-3(1)) and includes guidelines to "Protect endangered species of individual plants and animals" (HRS, sect. 344-4(3)(A)). However, none of the three species in this rule is presently protected under the State's endangered species act, and, despite provisions for conserving endemic resources, individual rare species may be overlooked during consideration of other land use priorities. Even if all other threats were removed by virtue of occurrence and protection on Federal land or in conservation districts, these species are still in danger of extinction due to their low numbers.

E. Other natural or manmade factors affecting its continued existence. The small numbers of individuals and populations of these three species of *Melicope* increase the potential for extinction from stochastic events. The limited gene pool may depress reproductive vigor, or a single human-caused or natural environmental disturbance could destroy a significant

percentage of the individuals or an entire population, potentially causing the extinction of the species. Only one individual of *M. adscendens* is known to exist, the two populations of *M. balloui* contain a total of less than 10 known individuals, and only one individual of *M. ovalis* has been definitely identified.

The only known individual of *Melicope adscendens* is located directly adjacent to a water pipeline used in ranching activities. Maintenance performed on the pipeline in the vicinity of the plant could damage or destroy the plant. In addition, cattle walking along the pipeline could easily trample the plant (A. Medeiros, pers. comm., 1992).

Competition with one or more alien plant taxa threatens one of the endangered *Melicope* species and constitutes a potential threat to the other two species. Lantana, brought to Hawaii as an ornamental plant, is an aggressive, thicket-forming shrub that can now be found on all of the main islands in mesic forests, dry shrublands, and other dry, disturbed habitats (Wagner *et al.* 1990). Lantana threatens *Melicope adscendens* (A. Medeiros, pers. comm., 1992). Kikuyu grass, an aggressive, perennial grass introduced to Hawaii as a pasture grass, withstands trampling and grazing and produces thick mats that choke out other plants and prevent their seedlings from establishing. The species has been declared a noxious weed by the U.S. Department of Agriculture (7 CFR 360) and threatens *M. adscendens* (O'Connor 1990; Smith 1985; A. Medeiros, pers. comm., 1992). The perennial Hilo grass, naturalized in moist to wet, disturbed areas on most Hawaiian Islands, produces a dense ground cover, even on poor soil, and is a potential threat to *M. balloui* and *M. ovalis* (O'Connor 1990; L. Cuddihy, pers. comm., 1992). Strawberry guava, widely naturalized in mesic and wet Hawaiian forests, develops into stands in which few other plants grow and physically displaces natural vegetation. Pigs depend on strawberry guava for food and in turn disperse the plant's seeds through the forests (Smith 1985, Wagner *et al.* 1990). Strawberry guava, considered to be the greatest weed problem in Hawaiian wet forests, is invading Kipahulu Valley and is a potential threat to *M. balloui* and *M. ovalis* (L. Cuddihy, pers. comm., 1992).

Stochastic events such as human-set fires and wildfires destroy native Hawaiian vegetation and usually favor fire-resistant alien plants (Cuddihy and Stone 1990). Fire is a potential threat to *Melicope adscendens* (A. Medeiros, pers. comm., 1992).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in issuing this rule. Based on this evaluation, the preferred action is to list these three species as endangered. The species consist of only 1 or 2 populations each and 1 to approximately 10 known individual plants. They are threatened by habitat degradation and damage to plants by feral or domestic animals and by competition from alien plants. Small population size and limited distribution make these species particularly vulnerable to reduced reproductive vigor and/or extinction from stochastic events. Because these three species are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act.

Critical habitat is not being designated for the three species included in this rule for reasons discussed in the "Critical Habitat" section of this final rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered. The Service finds that designation of critical habitat is not presently prudent for these species. All three species have extremely low total populations and face anthropogenic threats. The listing of these species as endangered publicizes the rarity of the plants and, thus, can make the species attractive to researchers, curiosity seekers, or collectors of rare plants. The publication of precise maps and descriptions of critical habitat in the **Federal Register** and local newspapers as required in a designation of critical habitat would increase the species' vulnerability to take or vandalism and, therefore, could contribute to their decline and increase enforcement problems. Protection of the species' habitat will be addressed through the recovery process and through the section 7 consultation process. All involved parties and the landowners have been notified of the importance of protecting the habitat of these species. Two of the three species are found in Haleakala National Park where Federal law protects all plants from damage or removal. It is highly unlikely that Federal activities in the National Park would directly affect the continued existence of these two species. Therefore, the Service finds that designation of critical habitat for these

species is not prudent at this time because such designation would increase the species' vulnerability to vandalism, collecting, or other human activities and because it is unlikely to aid in the conservation of the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of an endangered species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. One species (*Melicope ovalis*) is located only in Haleakala National Park. One population of another species (*M. balloui*) is also found in this park. Laws relating to national parks prohibit damage or removal of any plants growing in the parks. There are no Federal activities that are known to occur within the present known habitat of these three plant species.

The Act and implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plant species. With respect to the three *Melicope* species listed as endangered by this rule, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export such species to/from the United States; transport

such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such species in interstate or foreign commerce; remove and reduce to possession such species from areas under Federal jurisdiction; maliciously damage or destroy any such species on any area under Federal jurisdiction; or remove, cut, dig up, damage, or destroy any such species on any other area in knowing violation of any State law or regulation or in the course of any violation of a State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. Section 10 of the Act and 50 CFR 17.62 provide for the issuance of permits under certain circumstances to carry out activities involving endangered plants that are otherwise prohibited by section 9.

It is the policy of the Service (59 FR 34272) to identify to the maximum extent practicable at the time a species is listed those activities that would or would not be likely to constitute a violation of section 9 of the Act. Such information is intended to clarify the potential impacts of a species' listing on proposed and ongoing activities within the species' range. Two of the species occur on National Park Service lands. Collection, damage or destruction of these species on Federal lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of a State criminal trespass law (see Hawaii State Law section below). The Service is not aware of any trade in these species or of any activities currently being conducted by the public that will be affected by this listing and result in a violation of section 9. Requests for copies of the regulations concerning listed plants and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181 (503/231-2063; FAX 503/231-6243). Questions regarding whether specific activities will constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Pacific Islands Office (see **ADDRESSES** section).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species legislation. Hawaii's Endangered Species Act states, "Any species of aquatic life, wildlife, or land

plant that has been determined to be an endangered species pursuant to the [Federal] Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * * (HRS, sect. 195D-4(a)). The State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant, or attempting to engage in any such conduct. State law also encourages conservation by State agencies. Laws relating to the conservation of biological resources allow for the acquisition of land as well as the development and implementation of programs concerning the conservation of biological resources (HRS, sect. 195D-5(a)).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental

Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the *Federal Register* on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Pacific Islands Office, see ADDRESSES above.

Author

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List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500; unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *
(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
<i>Melicope</i> (= <i>Pelea</i>) <i>adscendens</i> .	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA
<i>Melicope</i> (= <i>Pelea</i>) <i>balloui</i> .	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA
<i>Melicope</i> (= <i>Pelea</i>) <i>ovalis</i> .	Alani	U.S.A. (HI)	Rutaceae	E	565	NA	NA

Dated: November 8, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

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